

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, STATE OF
CALIFORNIA, COMMONWEALTH OF
MASSACHUSETTS, STATE OF
COLORADO, STATE OF CONNECTICUT,
STATE OF DELAWARE, DISTRICT OF
COLUMBIA, STATE OF HAWAII, STATE
OF ILLINOIS, STATE OF MAINE, STATE
OF MARYLAND, STATE OF MICHIGAN,
STATE OF MINNESOTA, STATE OF
NEVADA, STATE OF NEW JERSEY,
STATE OF NEW MEXICO, STATE OF
NORTH CAROLINA, STATE OF
OREGON, COMMONWEALTH OF
PENNSYLVANIA, STATE OF RHODE
ISLAND, STATE OF VERMONT,
COMMONWEALTH OF VIRGINIA, and
STATE OF WISCONSIN,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
ALEX M. AZAR II, *in his official capacity as
Secretary of Health and Human Services*, and
ROGER SEVERINO, *in his official capacity
as Director of the Office for Civil Rights at
the United States Department of Health and
Human Services*,

Defendants.

Civil Action No. 1:20-cv-5583-AKH

**PLAINTIFFS' NOTICE OF RENEWED MOTION FOR SUMMARY JUDGMENT ON
ADMINISTRATIVE PROCEDURE ACT CLAIMS**

PLEASE TAKE NOTICE that under Federal Rule of Civil Procedure 56, Plaintiffs renew their motion for partial summary judgment on the Administrative Procedure Act claims contained in their Complaint in this action.¹ *See* Compl. ¶¶ 257-279 [ECF No. 1].

Plaintiffs request that the Court declare that Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority, 85 Fed. Reg. 37,160 (June 19, 2020) (“2020 Rule”) is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law within the meaning of 5 U.S.C. § 706(2)(A); declare that the 2020 Rule is in excess of the U.S. Department of Health and Human Services’ statutory jurisdiction, authority, or limitations, or short of statutory right within the meaning of 5 U.S.C. § 706(2)(C); vacate and set aside the 2020 Rule in its entirety; and enjoin Defendants and all their officers, employees, and agents, and anyone acting in concert with them, from implementing, applying, or taking any action whatsoever under the 2020 Rule.

In support of this motion, Plaintiffs rely on the concurrently filed Memorandum of Law, Local Rule 56.1 Statement of Undisputed Material Facts, the Declaration of Joseph Wardenski dated December 2, 2020, and the exhibits attached thereto; the Administrative Record lodged by Defendants on November 6, 2020 [ECF No. 103]; the pleadings and papers on file in this action; and any argument and evidence that is presented on the hearing of this motion.

¹ Plaintiffs previously moved for partial summary judgment on September 10, 2020 [ECF No. 62]. The Court denied that motion without prejudice pending Defendants’ production of the administrative record. Order Regulating Proceedings and Record Procedures [ECF No. 93].

Dated: December 2, 2020

Respectfully submitted,

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**Appearing pro hac vice or application for admission pro
hac vice forthcoming*